

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SCOTT TEVEN, D/B/A	§	
SCOTT TEVEN PHOTOGRAPHY,	§	
	§	
Plaintiff	§	Civil Action No. _____
	§	
VS.	§	Jury Trial Demanded
	§	
MIDPOINT TRADE BOOKS, INC. AND	§	
ERIC M. KAMPMANN,	§	
	§	
Defendants.	§	

**ORIGINAL COMPLAINT**

Plaintiff Scott Teven, d/b/a Scott Teven Photography, complains of Defendants Midpoint Trade Books, Inc. and Eric M. Kampmann, and for his cause of action for copyright infringement, respectfully would show the following:

**The Parties**

1. Scott Teven, d/b/a Scott Teven Photography (hereinafter “Teven”) is an individual engaged in the business of professional photography, who resides and has his principal place of business in Houston, Harris County, Texas.

2. Midpoint Trade Books, Inc. (hereinafter “Midpoint”) is a corporation organized under the laws of the State of New York. Midpoint has done business in Texas and has committed copyright infringement in the State of Texas, as is further alleged below. Midpoint does not maintain a regular place of business in Texas, and has not designated a registered agent for service of process within the State of Texas; therefore, service of process upon Midpoint may be had by serving the Secretary of State of Texas with instructions that this Original Complaint

and Citation be forwarded to the person in charge of the business of Defendant Midpoint, corporate officer Eric M. Kampmann, 27 West 20th Street, Suite 1102, New York, New York 10011.

3. Defendant Eric M. Kampmann (hereinafter “Kampmann”) is an individual who resides in the State of Connecticut and whose place of business is in New York City, New York. Kampmann has done business in Texas and has committed copyright infringement in the State of Texas, as is further alleged below. Kampmann does not maintain a regular place of business in Texas, and has not designated a registered agent for service of process within the State of Texas; therefore, service of process upon Kampmann may be had by serving the Secretary of State of Texas with instructions that this Original Complaint and Citation be forwarded to Defendant Eric M. Kampmann at his place of business, 27 West 20th Street, Suite 1102, New York, New York 10011.

### **Jurisdiction and Venue**

4. This is a copyright infringement action. This Court has exclusive federal jurisdiction over the subject matter of Teven’s claim under 28 U.S.C. § 1338. In addition, this Court has subject matter jurisdiction under 28 U.S.C. § 1331 as this claim arises under the copyright laws of the United States, 17 U.S.C. § 101, *et seq.*

5. This Court has specific personal jurisdiction over Defendants Midpoint Trade Books, Inc. and Eric M. Kampmann. This action for copyright infringement arises out of the publication by Midpoint and Kampmann of infringing copies of 46 of Teven’s photographs, all of which are included in, and make up a substantial portion of, a book titled *Texas A Visual Journey*.

6. This Court has specific jurisdiction of the Defendants because Defendants knowingly, intentionally and purposefully committed acts of copyright infringement in Texas, in the form of every sale of *Texas A Visual Journey* that took place in Texas or resulted in the delivery of a copy of the book to a purchaser in Texas. Under the Copyright Act of 1976, a copyright owner has certain exclusive rights, including the exclusive right to distribute, by sale, copies of the copyright owner's works. Any violation of the copyright owner's exclusive rights is an infringer of the copyrights. 17 U.S.C. § 501(a). Each sale of each infringing copy is a new, separate, and distinct act of copyright infringement.

7. A substantial portion of Teven's entitlement to relief under the Copyright Act arises from the sales of the book in Texas. Teven incorporates by reference his allegations below describing the specific infringing conduct of Defendants that was directed to Texas.

8. Venue in this District is proper under 27 U.S.C. § 1400(a) and 28 U.S.C. § 1391(b) and (c) because Defendants do business in and may be found in this District.

### **Factual Background**

9. Scott Teven has been a full-time, professional photographer since 1990 when he established his photography business in Houston, Texas. Over the years he created a specialized collection of Texas photographs that feature the region. In 2000 he established a business website to promote the photo collection as a valuable resource to companies seeking distinctive regional images. A significant portion of his income is derived from licensing these images for publication. His photographs have been widely published in books, magazines and corporate publications.

10. Teven is the author (photographer) of, and at all times relevant to this claim, has been and is now the sole owner of all right, title and interest in and to the copyrights in the following 46 photographs:

- 1) The State Flag Of Texas
- 2) Kemah Sailboats in Clear Lake Channel
- 3) Galveston Strand
- 4) Galveston, Colonel Paddleboat
- 5) Galveston, Rainforest Pyramid At Moody Gardens
- 6) Galveston, Flagship Pier
- 7) Galveston, Historic Homes
- 8) Galveston, Old Streetcar on the Strand
- 9) Galveston Bay Sunset
- 10) Galveston, Grand Opera House
- 11) Houston Skyline At Night
- 12) Williams Tower And Water Wall
- 13) The Water Wall Fountain
- 14) NASA Rockets
- 15) Tranquility Park And Wortham Fountains
- 16) Houston Museum Of Fine Arts
- 17) Sam Houston Statue
- 18) San Jacinto Monument And Reflecting Pool
- 19) Minute Maid Park Baseball Field
- 20) Beer Can House
- 21) Bayou Bend Gardens
- 22) The Battleship Texas
- 23) Harris County Civil Courthouse 1910
- 24) Houston Astrodome and NRG Stadium
- 25) City Hall And Herman Square
- 26) Austin, Cityscape And Town Lake
- 27) Austin, University Of Texas Fountain
- 28) Austin, Sixth Street
- 29) Austin, Pennybacker Bridge Over Colorado River
- 30) Austin, Congress Avenue and Capital Dome
- 31) Austin, Texas State History Museum
- 32) San Antonio King William Historic District Home,
- 33) San Antonio, Bexar County Courthouse
- 34) San Antonio, Tower Of The Americas
- 35) San Antonio, Alamo Dome
- 36) San Antonio, Evening On The River Walk
- 37) San Antonio, Battle Of Flowers Parade Queen
- 38) San Antonio, Bexar County Palomino Patrol
- 39) San Antonio, Tower Life Building
- 40) Dallas County Courthouse

- 41) Flower Field, Llano
- 42) Hereford Cattle Grazing
- 43) Longhorn Steer
- 44) Llano County Courthouse
- 45) Oil Derrick At Sunset
- 46) Cattle Round Up

Each of the foregoing photographs is an individual work of authorship created by Teven. Each of these photographs is protectable subject matter pursuant to 17 U.S.C. § 102(a)(5). (Hereinafter, the foregoing 46 photographs will be referred to collectively as the “Copyrighted Photographs.”)

11. Teven has registered each of the Copyrighted Photographs with the United States Copyright Office. The Copyright Office provides that photographs can be registered as groups of individual works, and Teven has obtained certificates of copyright registration for three groups of photographs including the 46 photographs at issue in this action. These registration certificates are:

<b>Certificate Number</b>	<b>Title</b>	<b>Date</b>
VAu000444061	Photography collection no. 2	1999
VAu000449024	Photography collection no. 3	1999
VAu000669614	Photography collection no. 4: Group registration of 3,165 photographs	2005

12. Teven has complied in all respects with Title 17 of the United States Code (Copyright Act of 1976) and all other United States laws governing copyrights, and has secured the exclusive rights and privileges in and to the copyrights to the Copyrighted Photographs described above.

13. Teven’s copyrights in the Copyrighted Photographs described above are presently valid and subsisting, and were valid and subsisting from the moment of their creation, and all conditions precedent to the filing of this action for copyright infringement have occurred.

14. In 2007, Teven granted a non-exclusive license to a Canadian publisher, Whitecap Books Ltd., to publish 61 of his photographs, including each of the 46 Copyrighted Photographs described above, in a book to be titled *Texas A Visual Journey*. The written agreement defined Teven as “Photographer” and Whitecap Books as “Client.” The agreement limited Whitecap Books to printing 20,000 copies during a five year period beginning January 17, 2007. The agreement set out specific conditions precedent to the non-exclusive license, and expressly stated: “Client shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Photographer. All rights are reserved except those specifically granted by this invoice.” The agreement was signed by Michael F. Burch on behalf of Whitecap Books.

15. In 2015, Teven learned that an edition of a book titled *Texas A Visual Journey* was being sold at bookstores including Barnes & Noble, and was still offered for sale on the website of Amazon.com. This edition was published by Defendant Midpoint. The edition included printed information stating that the copyright in the book had been “renewed” in 2012 by Midpoint. The Midpoint edition includes the following Copyrighted Photographs, on the pages identified below:

<b>Book Page Number</b>	<b>Photo Title</b>	<b>Catalog ID</b>	<b>Copyright Reg. Number</b>
1	The State Flag Of Texas	E11-201	VAu000444061
22	Kemah Sailboats in Clear Lake Channel	E 4-63	VAu000449024
25	Galveston Strand	E 1-16	VAu000444061
26	Galveston, Colonel Paddleboat	E11-07	VAu000669614
27	Galveston, Rainforest Pyramid At Moody Gardens	E 3-41	VAu000669614
28	Galveston, Flagship Pier	E10-12	VAu000669614
30	Galveston, Historic Homes	E10-03	VAu000669614
31	Galveston, Old Streetcar on the Strand	E 2-22	VAu000444061
32	Galveston Bay Sunset	E11-17	VAu000669614
35	Galveston, Grand Opera House	E 3-58	VAu000444061
38	Houston Skyline At Night	A 22-07	VAu000669614

40	Williams Tower And Water Wall	C 1-01	VAu000444061
41	The Water Wall Fountain	C 1-09	VAu000449024
44	NASA Rockets	C12-266	VAu000444061
48	Tranquility Park And Wortham Fountains	C 1-16	VAu000444061
49	Houston Museum Of Fine Arts	C20-01	VAu000669614
52	Sam Houston Statue	C 2-32	VAu000669614
55	San Jacinto Monument And Reflecting Pool	C19-07	VAu000669614
56	Minute Maid Park Baseball Field	B12-20	VAu000669614
57	Beer Can House	C 8-151	VAu000669614
58	Bayou Bend Gardens	C10-181	VAu000444061
60	The Battleship Texas	C19-20	VAu000444061
61	Harris County Civil Courthouse 1910	B11-220	VAu000669614
64	Houston Astrodome and NRG Stadium	B14-06	VAu000669614
66	City Hall And Herman Square	B 8-156	VAu000449024
72	Austin, Cityscape And Town Lake	D 4-07	VAu000669614
74	Austin, University Of Texas Fountain	D 6-07	VAu000669614
76	Austin, Sixth Street	D 6-16	VAu000669614
78	Austin, Pennybacker Bridge Over Colorado River	D 9-02	VAu000669614
81	Austin, Congress Avenue and Capital Dome	D 3-01	VAu000669614
83	Austin, Texas State History Museum	D 7-06	VAu000669614
84	San Antonio King William Historic District Home,	D13-02	VAu000669614
85	San Antonio, Bexar County Courthouse	D13-11	VAu000669614
96	San Antonio, Tower Of The Americas	D12-15	VAu000669614
97	San Antonio, Alamo Dome	D12-20	VAu000669614
100	San Antonio, Evening On The River Walk	D10-11	VAu000669614
104	San Antonio, Battle Of Flowers Parade Queen	No ID	VAu000669614
105	San Antonio, Bexar County Palomino Patrol	No ID	VAu000669614
108	San Antonio, Tower Life Building	D12-01	VAu000669614
128	Dallas County Courthouse	D 2-12	VAu000669614
140	Flower Field, Llano	G-0012	VAu000669614
142	Hereford Cattle Grazing	N 1-14	VAu000669614
143	Longhorn Steer	N 1-05	VAu000669614
145	Llano County Courthouse	J 3-16	VAu000669614
177	Oil Derrick At Sunset	F 7-128	VAu000669614
188	Cattle Round Up	L28-14	VAu000669614

(The “Catalog ID” numbers refer to the identification of the photographs within Teven’s records.)

16. Teven has never authorized Midpoint or Kampmann to reproduce his Copyrighted Photographs or sell copies of his Copyrighted Photographs in any form. Teven has never authorized the assignment of any rights under the 2007 agreement between Teven and Whitecap Books to any entity other than Whitecap Books. Teven has never agreed to extend the time period of the non-exclusive license that he granted to Whitecap Books, which expired on January 17, 2012.

17. Teven has never entered into any agreements of any kind with Midpoint or Kampmann; in fact, to his knowledge, Teven has never personally had any contact with Midpoint or Kampmann. His only contact with Midpoint or Kampmann was through his counsel, after he retained the undersigned counsel to investigate the circumstances of the continued publication and sale of *Texas A Visual Journey*.

18. Defendants have each infringed Teven’s copyrights in the Copyrighted Photographs by violating Teven’s exclusive rights as a copyright owner, including the following:

- a. Defendants have each made copies of the Copyrighted Photographs by creating, or causing to be created, paper and digital copies of the Copyrighted Photographs.
- b. Defendants have each distributed, or caused to be distributed, by sale or otherwise, copies of the Copyrighted Photographs by distributing the book *Texas A Visual Journey*.

These infringing activities have resulted in the sales of infringing copies of Teven’s Copyrighted Photographs described above.



19. Defendants have sold, caused to be sold and induced third parties to sell the book *Texas A Visual Journey*, each of which includes 46 infringing copies of Teven's Copyrighted Photographs, in Texas. These sales were specifically directed to Texas and Defendants knew, expected and intended that *Texas A Visual Journey* would have a substantial market in Texas and would appeal to Texas purchasers. In addition, Defendants knew that *Texas A Visual Journey* was achieving a substantial portion of its total sales in Texas, and did nothing to prevent sales from occurring in Texas. Defendant Kampmann is the Chief Executive Officer (CEO) of Midpoint, and on information and belief, is a shareholder in Midpoint and has the ability and financial interest to control Midpoint and to prevent Midpoint from infringing Teven's copyrights.

20. By letter dated July 12, 2016, to Nick Rundall of Whitecap Books, Teven's attorney requested information about the printing and sales of *Texas A Visual Journey*. Mr. Rundall responded in an email dated August 5, 2016, stating that Whitecap Books had been sold to "Fitzhenry & Whiteside Ltd" in 2012, that it had no inventories of the book, "no sales have been made," and "I do not believe that this book is in print, nor has it been for some years." Further investigation showed that the edition being sold in Houston stated that the publisher was Midpoint.

21. On September 2, 2016, Teven's counsel wrote Midpoint and Kampmann, advising them that Teven had never granted any license to Midpoint, that the reproduction of Teven's photographs without his authorization violated his exclusive rights as a copyright owner and constituted copyright infringement. The letter included the statement: "If Midpoint believes that it had the right to reproduce Mr. Teven's photographs, we would like to discuss the basis for this belief." Finally, the letter offered Midpoint an opportunity to discuss settlement.

22. On September 12, 2016, Kampmann responded to the letter with a telephone call to Teven's counsel. He stated that he was collecting information and would send answers to the questions in the September 2, 2016 letter in the following week. Despite follow up emails, no information has ever been provided.

23. Defendants continue to violate Teven's copyrights by continuing their infringing activities. Teven therefore brings this action to protect his rights under federal law.

### **Count 1: Copyright Infringement**

24. Teven complains of Defendants for copyright infringement, and incorporates paragraphs 1 - 23 above by reference.

25. The creation of the copies of Teven's Copyrighted Photographs and the distribution of such copies by Defendants has infringed and continues to infringe Teven's copyrights in the Copyrighted Works.

26. In the alternative, Defendant Kampmann has or has had a direct financial interest in the creation, publication and distribution of the infringing copies of Teven's Copyrighted Photographs, and had the power or the ability to supervise and control the creation, publication and distribution of the infringing copies of Teven's Copyrighted Photographs, but failed to prevent the infringement of Teven's copyrights. Defendant Kampmann is therefore liable for vicarious infringement of Teven's Copyrighted Photographs by Defendant Midpoint.

27. Defendants are each jointly and severally liable for all of their profits attributable to the infringements, pursuant to 17 U.S.C. § 504(b).

28. In the alternative, Defendants are each jointly and severally liable for statutory damages pursuant to 17 U.S.C. § 504(c) in the sum of up to \$30,000 for each of the Copyrighted Photographs infringed by Defendants. In the alternative, Teven alleges that the Defendants have

committed the infringement of his copyrights willfully with respect to each of the Copyrighted Photographs, and Defendants are therefore jointly and severally liable for up to \$150,000 for each of the Copyrighted Photographs that they have infringed, pursuant to 17 U.S.C. §504(c).

29. In addition, Teven is entitled to preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502 prohibiting Defendants from further infringement of Teven's copyrights, including but not limited to the further use or distribution of the infringing copies included in the book *Texas A Visual Journey*.

30. Furthermore, this Court should issue an order pursuant to 17 U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Photographs in possession of Defendants or their agents or contractors that infringe Teven's copyrights during the pendency of this lawsuit; and (b) upon final hearing of this case, to destroy or otherwise dispose of those copies.

### **Jury Demand**

31. Pursuant to Federal Rule of Civil Procedure 38, Teven demands trial by jury on all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Scott Teven, d/b/a Scott Teven Photography prays that Defendants be cited to appear and answer, and that upon final trial he have and recover from Defendants as set forth above, that he have injunctive relief and other relief against Defendants as requested herein, and that he have such other relief as it may show himself to be entitled.

Respectfully submitted,

/s/ Patrick Zummo

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SCOTT TEVEN PHOTOGRAPHY